

REMARKS

FORMAL MATTERS:

Claims 1-15 are pending after entry of the amendments set forth herein.

No claims are canceled.

Claims 1, 4, 5, 7, and 11 have been amended. Support for these amendments is found throughout the specification and figures. More specifically, support for amendments made in claims 1 and 11 can be found at least in Figs. 1 and 3A-C and corresponding description in the specification. (See also, application as filed; p. 7-12). Claims 4, 5, and 7 have been amended to fix minor informalities and/or to align with amendments made in claim 1.

No new matter is added.

SUMMARY OF INTERVIEW

Applicant expresses his appreciation to the Primary Examiner, Eric Winakur, for permitting a telephonic interview on March 15, 2010 to discuss the current Office Action and references: U.S. Patent No. 5,830,136 (Delonzor et al.) and U.S. Patent No. 6,045,279 (Follis). The outstanding rejections of the claims under §102 and §103 were discussed during the interview. While no specific claim language was agreed upon as sufficient to overcome the rejections, it was suggested by the Examiner that claim amendments to further distinguish the layer of coupling agent may be sufficient to overcome the rejections. Independent claims 1 and 11 have been amended accordingly.

REJECTIONS UNDER §102

Claims 1-3, 8-10 and 15 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Delonzor et al. '136 (U.S. Patent No. 5,830,136).

In the Response to Arguments section in the Office Action, the Office Action states that the gel layer disclosed in Delonzor is useably transferable to the tissue site when the device is removed. Specifically, the Office Action points to column 6, lines 66-67 of Delonzor which discusses the mineral oil gel being used to condition the skin.

Delonzor, however, does not disclose or suggest a predetermined amount of the layer of gel that is uniformly and usably transferrable to the surface of the tissue or the body part upon removal of the article from the tissue or the body part, wherein the predetermined amount of the layer of coupling agent is an appropriate amount for enhancing optical and thermal coupling between the tissue or the body part and a separate measuring device including an optical probe. Rather, Delonzor only states that the mineral oil gel provides the benefit of conditioning the skin. An amount sufficient to condition the skin is not indicative or suggestive of an appropriate amount for enhancing optical and thermal coupling.

Furthermore, while Delonzor discloses the gel layer used to spread heat generated by the emitter, the measurement takes place while the entire device 10 (including the entire gel layer 15 and emitter 24 and detector 26) is coupled to the body part. As shown in FIG. 5, the entire thickness of the gel layer 15 is between the body part and the emitter 24 and detector 26, and thus the entire thickness of the gel layer is taught as providing thermal coupling benefits. Delonzor does not disclose or suggest an amount of transferred gel that is an appropriate amount for enhancing optical and thermal coupling between the tissue or the body part and a separate measuring device including an optical probe.

Applicant has amended claim 1 accordingly to further clarify that the article is configured such that a predetermined amount of the layer of coupling agent is uniformly and usably transferrable to the surface of the tissue or the body part upon removal of the article from the tissue or the body part, wherein the predetermined amount of the layer of coupling agent is an appropriate amount for enhancing optical and thermal coupling between the tissue or the body part and a separate measuring device including an optical probe. Delonzor does not disclose or suggest at least this limitation of claim 1 and thus does not anticipate claim 1. Therefore, Applicant respectfully submits that claim 1 is in a condition for allowance.

Claims 2-3, 8-10, and 15 ultimately depend from claim 1 and thus include all limitations of claim 1. Therefore, Applicant respectfully submits that claims 2-3, 8-10, and 15 are in a condition for allowance for at least the same reasons as for claim 1.

REJECTIONS UNDER §103(A)

Claims 4-7 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Delonzor et al. '136. Claims 4-7 ultimately depend from claim 1, and thus include all limitations of claim 1. For at least the same reasons shown above for claim 1, Delonzar does not disclose or suggest all the limitations of claims 4-7 and does not render claims 4-7 obvious. Therefore, Applicant respectfully submits that claims 4-7 are in a condition for allowance for at least these reasons.

REJECTIONS UNDER §103(A)

Claims 11-14 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Messerschmidt '951 (USPN 5,823,951) further in view of Follis '279 (USPN 6,045,279). Applicant respectfully submits that the combination of Messerschmidt and Follis fail to disclose or suggest all limitations of claims 11-14, and does not render claims 11-14 obvious.

As stated by the Office Action, Messerschmidt does not disclose the method in which the coupling agent is applied to the tissue. The Office Action relies on Follis for this limitation. As shown in FIGS. 1 and 2, Follis discloses an applicator 10 with head assembly 14. The head assembly comprises a chamber 16 and sponge assembly 46 connected to the outside of chamber 16. A layer of fluid is contained within chamber 16. The layer of fluid is contained within chamber 16 by pressure plate 28 which may be moved further into chamber 16 to place positive pressure on the fluid. With positive pressure, fluid substance is pushed through fluid dispensing openings 22 in chamber 16, through a perforated base 50 of sponge 54, and into sponge 54.

Follis does not disclose or suggest an article comprising a layer of fluid that provides a surface on the article for contacting the tissue or body part. Rather, in Follis, the layer of fluid is within chamber 16 and does not provide a surface on the article for contacting the tissue or body part. Furthermore, Follis does not disclose or suggest contacting the article to the surface of a tissue or body part such that the layer of coupling agent contacts the tissue or the body part. Again, the layer of fluid is within chamber 16 and does not provide a surface on the article for contacting the tissue or body part. Rather, in Follis, fluid is separated from the layer of fluid when pressure is provided by plate 28 and the fluid is pushed out fluid dispensing openings 22 in chamber 16.

Applicant has amended claim 11 to further clarify these differences. As amended, claim 11 requires, in part, the providing of an article comprising a layer of coupling agent that provides a surface on the article for contacting a tissue or a body part. Further, claim 11 also requires, in part, the contacting of the article to the surface of a tissue or body part such that the layer of coupling agent contacts the tissue or the body part. Since neither Messerschmidt nor Follis disclose or suggest these limitations, the combination of Messerschmidt in view of Follis does not render claim 11 obvious. Therefore, Applicant respectfully submits that claim 11 is in a condition for allowance.

Claims 12-14 ultimately depend from claim 11 and thus include all limitations of claim 11. Therefore, Applicant respectfully submits that claims 12-14 are in a condition for allowance for at least the same reasons as stated above for claim 11.

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number ADCI-180.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP

Date: April 22, 2010

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Enclosure(s):

- **Request for Continued Examination under 37 C.F.R §1.114**

EJB/MTH

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